

10:12:56 1 UNITED STATES DISTRICT COURT

10:12:56 2 SOUTHERN DISTRICT OF OHIO

10:12:56 3 WESTERN DIVISION

10:12:56 4 - - - - -
ESTATE OF ROGER D. :

10:12:56 5 OWENSBY JR., et al., :

10:12:56 6 Plaintiffs, :

10:12:56 7 vs. :

Case No. 01-CV-769

(Judge S. A. Spiegel)

10:12:56 8 CITY OF CINCINNATI, :

10:12:56 9 et al., :

10:12:56 10 Defendants. :

10:12:56 11 - - - - -

10:12:56 12 Deposition of ROBERT B. HEILAND JR.,

10:12:56 13 defendant herein, called by the plaintiffs for

10:12:56 14 cross-examination, pursuant to the Federal Rules of

10:12:56 15 Civil Procedure, taken before me, Wendy Davies

10:12:56 16 Welsh, a Registered Diplomate Reporter and Notary

10:12:56 17 Public in and for the State of Ohio, at the offices

10:12:56 18 of Helmer, Martins & Morgan Co. LPA, 1900 Fourth &

10:12:56 19 Walnut Centre, 105 East Fourth Street, Cincinnati,

10:12:56 20 Ohio, on Wednesday, December 3, 2003, at 10:10 AM.

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10:31:05 1 based on your past experience; is that right?

10:31:08 2 A. That's right.

10:31:17 3 Q. I take it from what I've seen in this case
10:31:19 4 you did not perform any CPR or any medical --
10:31:24 5 provide any medical assistance to Mr. Owensby; is
10:31:26 6 that right?

10:31:28 7 MR. WEISENFELDER: Objection.

10:31:29 8 Go ahead.

10:31:30 9 A. That's right.

10:31:42 10 Q. I want to take you back now to November 7,
10:31:46 11 2000, to that evening. As I understand it, you were
10:31:51 12 at the Golf Manor police station and received a
10:31:54 13 notification of an officer needs assistance call; is
10:31:59 14 that right?

10:32:00 15 A. That's right.

10:32:01 16 Q. Starting from that point would you walk me
10:32:03 17 through what happened.

10:32:06 18 A. At that point I got into my cruiser. I
10:32:15 19 was actually in the police station when the call
10:32:18 20 came out. I knew it was close, so I went to my
10:32:21 21 cruiser, turned the lights and sirens on, and
10:32:24 22 responded to the scene.

10:32:28 23 Pulled onto the parking lot, the Sunoco
10:32:35 24 parking lot, parked my car, got out of my car, went

10:32:39 1 around the front of the cruiser. And by the time I
10:32:42 2 got to the front corner, the passenger's side, I saw
10:32:48 3 a Huntington Meadows security guy waiving me down
10:32:53 4 like everything was okay, slow down.

10:32:55 5 Q. That's what you understood it to mean?

10:32:57 6 A. That's what I understood it to mean.

10:33:00 7 Q. Okay.

10:33:00 8 A. So I stopped at the front of my cruiser
10:33:03 9 and I saw some distance away the rear passenger's
10:33:15 10 side of a car, two police officers, and who I now
10:33:21 11 know to be Roger Owensby laying on the ground.

10:33:25 12 Q. Okay. Go ahead.

10:33:27 13 A. Did I answer your question?

10:33:28 14 Q. No. When you said two police officers,
10:33:31 15 and then you said Owensby, I thought obviously he
10:33:35 16 was not one of the police officers. Okay.

10:33:38 17 A. He appeared to be handcuffed, to me. And
10:33:43 18 there was one on each side of him.

10:33:45 19 Q. Can you clarify that for a second? He
10:33:47 20 appeared to be handcuffed? When you say "to me,"
10:33:52 21 you mean it appeared to you that he was handcuffed?

10:33:56 22 A. It appeared to me --

10:33:57 23 Q. That he was handcuffed?

10:33:58 24 A. -- that he was handcuff.

10:34:01 1 Q. All right.

10:34:01 2 A. And there was a police officer on each
10:34:02 3 side of him, there was a few people around. And one
10:34:18 4 of the officers asked if they could put him in my
10:34:20 5 cruiser.

10:34:21 6 Q. When that question was asked where was Mr.
10:34:24 7 Owensby?

10:34:28 8 A. Mr. Owensby was still on the ground or
10:34:32 9 they were in the process of picking him up.

10:34:35 10 Q. Picking him up? Okay. Go ahead.

10:34:37 11 A. I said, "Sure." They picked him up, one
10:34:41 12 on each side, under each arm, and brought him to my
10:34:47 13 cruiser. I opened the rear passenger door and they
10:34:56 14 placed Mr. Owensby in the back of my car.

10:35:09 15 Q. Let me show you what's previously been
10:35:12 16 marked as Exhibit 9. Do you recall whether or not
10:35:41 17 that is a photograph of the car that the officers
10:35:50 18 and Mr. Owensby were near when you pulled in?

10:36:05 19 A. I don't recall what type of car it was. I
10:36:10 20 can't see the background in the picture.

10:36:14 21 Q. As perspective goes, this is taken from
10:36:18 22 the entrance of the convenience store looking out.

10:36:22 23 A. Having said that, then they would have
10:36:25 24 been at the rear of this car.

10:36:27 1 Q. Did you watch them place Mr. Owensby in
10:36:33 2 the back seat of the car, of the Golf Manor car?

10:36:40 3 A. I opened the door, took a step away, and
10:36:53 4 they were having trouble placing him in the back of
10:36:53 5 the car. No. I didn't watch them place him all the
10:36:58 6 way in the car.

10:37:00 7 Q. What did you do as they were placing him?
10:37:03 8 Where was your attention directed as they were
10:37:05 9 placing him in the car?

10:37:09 10 A. Looking out the rest of the parking lot.
10:37:14 11 At one point I walked away and went over to another
10:37:17 12 Golf Manor officer, Officer Campbell.

10:37:20 13 Q. Was there a point in time where you
10:37:24 14 returned to your cruiser?

10:37:28 15 A. Yes.

10:37:29 16 Q. So you walk away toward Officer Campbell,
10:37:35 17 and then some time goes by and you and Officer
10:37:39 18 Campbell, or at least you, return to your cruiser,
10:37:44 19 right?

10:37:44 20 A. Correct.

10:37:44 21 Q. Do you have an estimate of how much time
10:37:46 22 went by in that interval?

10:37:52 23 A. I don't recall.

10:37:52 24 Q. When you returned to your cruiser was

10:39:05 1 it, correct?

10:39:06 2 A. I don't recall.

10:39:07 3 Q. In any event, there was sufficient light
10:39:10 4 from the gas island and from the convenience store
10:39:14 5 to see Mr. Owensby in the back seat of the car,
10:39:19 6 right?

10:39:29 7 A. The scene was well lit.

10:39:32 8 Q. When you did look in, what did you see?

10:39:36 9 A. Mr. Owensby was handcuffed and laying in
10:39:40 10 the back of the cruiser.

10:39:42 11 Q. How was he situated in the back seat?
10:39:57 12 Sitting up, laying down?

10:39:59 13 A. He was laying down.

10:40:00 14 Q. Where was his head?

10:40:06 15 A. His head was facing the passenger's side
10:40:11 16 of the car.

10:40:12 17 Q. When you looked in were you on the
10:40:14 18 passenger's side of the car?

10:40:20 19 A. Correction. His head was facing the
10:40:23 20 driver's side of the car. When I looked in I was on
10:40:28 21 the passenger's side.

10:40:29 22 Q. So you were looking in through the
10:40:32 23 passenger's side rear window?

10:40:34 24 A. Correct.

10:42:26 1 from the driver's side or the passenger's side?

10:42:44 2 A. I can't tell.

10:42:45 3 Q. Do you recall if he was laying on his
10:42:56 4 right side, and his head would have been behind the
10:43:07 5 driver's seat, correct?

10:43:10 6 A. His head was behind the driver's seat.

10:43:13 7 Q. So then he would have been facing the
10:43:17 8 trunk of the car?

10:43:21 9 MR. WEISENFELDER: Objection.

10:43:21 10 Go ahead.

10:43:36 11 A. What's the question?

10:43:38 12 Q. If he's laying on the back seat of the car
10:43:42 13 and his head is behind the driver's seat, he's
10:43:47 14 laying on his right shoulder, on his right side,
10:43:54 15 wouldn't his face be facing the trunk?

10:44:12 16 A. I don't recall how his face was.

10:44:14 17 Q. When you looked in at him did you notice
10:44:27 18 any movement?

10:44:29 19 A. No.

10:44:30 20 Q. Did you hear any sounds?

10:44:34 21 A. No.

10:44:35 22 Q. Did you do anything in response to looking
10:44:42 23 in on Mr. Owensby?

10:44:44 24 A. No.

10:44:45 1 Q. Why did you look in?

10:44:55 2 A. I don't know.

10:44:57 3 Q. While you were standing outside the car
10:45:04 4 near the passenger rear door did you talk with any
10:45:09 5 other officers?

10:45:10 6 A. Yes.

10:45:11 7 Q. Who did you talk to?

10:45:13 8 A. I spoke with Officer Brazile.

10:45:16 9 Q. He's a Cincinnati police officer?

10:45:18 10 A. He's a Cincinnati police officer, that's
10:45:20 11 correct.

10:45:21 12 Q. You know him from the academy?

10:45:23 13 A. I do.

10:45:24 14 Q. Did you talk with anyone else?

10:45:28 15 A. Officer Campbell. I don't know if I spoke
10:45:41 16 with anybody else at that time.

10:45:46 17 Q. What did you and Officer Campbell talk
10:45:48 18 about?

10:45:49 19 A. I don't recall.

10:45:53 20 Q. What did you and Officer Brazile talk
10:46:00 21 about?

10:46:01 22 A. I hadn't seen him in a while. We went to
10:46:04 23 the academy together at Scarlet Oaks, and I asked
10:46:07 24 him how he was doing. He said, "Good." And we

10:46:10 1 shook hands.

10:46:11 2 Q. Did Officer Brazile look in the car?

10:46:14 3 A. Yes.

10:46:14 4 Q. Do you recall whether or not he used a
10:46:17 5 flashlight?

10:46:19 6 A. I don't recall if he did or not.

10:46:21 7 Q. Did he say anything to you after he looked
10:46:24 8 in the car?

10:46:26 9 A. He did say something.

10:46:27 10 Q. Do you recall what he said?

10:46:29 11 A. I don't recall exactly what he said.

10:46:30 12 (Plaintiff's Exhibit 71
10:46:30 was marked for identi-
10:46:30 13 fication.)

10:46:30 14 Q. I'll direct you, but this is an excerpt
10:46:52 15 from Officer Brazile's deposition. It's marked as
10:47:05 16 Exhibit 71.

10:47:54 17 MR. WEISENFELDER: Do you want him to read
10:47:55 18 the whole thing?

10:47:57 19 MR. MARTINS: No.

10:47:58 20 Q. I'll direct you. Specifically, I want to
10:48:08 21 direct your attention to page 54.

10:48:12 22 Beginning at line 3, you see the question
10:48:16 23 is posed: "Did you say anything to Officer Heiland
10:48:21 24 at that time, after seeing Mr. Owensby with your